



## University of Baltimore Law Forum

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Volume 48 | Number 2

Article 7

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3-1-2018

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#### Recommended Citation

Koncen, Taylor (2018) "Recent Developments: Green v. State," *University of Baltimore Law Forum*: Vol. 48 : No. 2 , Article 7.

Available at: <https://scholarworks.law.ubalt.edu/lf/vol48/iss2/7>

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## RECENT DEVELOPMENT

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**GREEN V. STATE: THE STATE IS NOT REQUIRED TO DISCLOSE A WITNESS'S PRETRIAL IDENTIFICATION OF A CO-DEFENDANT; A MANDATORY DISCLOSURE EXISTS WHEN A STATE WITNESS'S PRETRIAL IDENTIFICATION OF A CO-DEFENDANT IS DEEMED RELEVANT MATERIAL OR INFORMATION REGARDING THE PRETRIAL IDENTIFICATION OF THE DEFENDANT .**

**By: Taylor Koncen**

The Court of Appeals of Maryland held that the plain language of Maryland Rule 4-263(d)(7)(B) ("Md. Rule 4-263(d)(7)(B)") does not require the State to disclose a witness's pretrial identification of a co-defendant. *Green v. State*, 456 Md. 97, 141, 171 A.3d 1162, 1187 (2017). The court also held that in circumstances where the witness's pretrial identification of a co-defendant is equivalent to an identification of the defendant, disclosure by the State is required because that identification is relevant information under Md. Rule 4-263(d)(7)(B). *Id.* at 161-62, 171 A.3d at 1199. Finally, the court held that the State's failure to disclose this identification was not harmless beyond a reasonable doubt. *Id.* at 168, 171 A.3d at 1202.

John W. Green ("Green") and Jonathan Copeland ("Copeland") confronted Jeffrey Myers ("Myers") after Copeland's home was burglarized. During the confrontation, Myers was fatally shot. Green, Copeland, and Myers were the only individuals present at the scene of the shooting. Green and Copeland were arrested and charged with first-degree murder, conspiracy to commit first-degree murder, and other related charges.

Copeland pled guilty to first-degree murder and conspiracy to commit first-degree murder. At trial, the State presented testimony of its sole eyewitness, Doris Carter ("Carter"). Carter provided a description of the two men that confronted Myers. She also identified Copeland, in the courtroom, as the man who did not shoot Myers. Following the State's proffer of Carter's testimony, Green objected, arguing that the State failed to disclose Carter's identification of Copeland prior to trial. The Circuit Court for Cecil County over-ruled Green's objection and allowed Carter to identify Copeland as the individual who did not shoot Myers. Green was convicted of first-degree murder and conspiracy to commit first-degree murder. Green appealed to the Court of Special Appeals of Maryland, which affirmed the circuit court's decision, holding that the language of Md. Rule 4-263(d)(7)(B) was unambiguous and did not impose an obligation upon the State to disclose Carter's pretrial identification of Copeland.

The Court of Appeals of Maryland granted Green's petition for a writ of *certiorari* to decide two issues. The first issue presented was whether the language of Md. Rule 4-263(d)(7)(B) requires the State to disclose a

witness's pretrial identification of a co-defendant. The court was also asked to consider the Court of Special Appeals' holding that Carter's identification of Copeland was not relevant material or information regarding the pretrial identification of Green. *Green*, 456 Md. at 121, 171 A.3d at 1175-76.

The Court of Appeals of Maryland began its analysis by examining the language of Md. Rule 4-263(d)(7)(B). *Green*, 456 Md. at 121, 171 A.3d at 1176. The rule mandates the State to disclose all relevant material or information regarding a witness's pretrial identification of the defendant. *Id.* In the present case, the court held that the language of Md. Rule 4-263(d)(7)(B) was plain, unambiguous, and did not require the disclosure of a State witness's pretrial identification of a co-defendant. *Id.* at 147, 171 A.3d at 1190.

Next, the court discussed whether the State was required to disclose Carter's pretrial identification of Copeland as relevant information to the identification of Green under the scope of Md. Rule 4-263(d)(7)(B). *Green*, 456 Md. at 147, 171 A.3d at 1190-91. Green argued that Carter's pretrial identification of Copeland constituted relevant information since it identified him as the shooter, and thus required disclosure. *Id.* at 147-48, 171 A.3d 1191. The State countered by asserting that the language of the rule only required disclosure of relevant information regarding a pretrial identification of Green. *Id.* at 148, 171 A.3d 1191.

In its analysis of Md. Rule 4-263(d)(7)(B), the court reviewed precedent. *Green*, 456 Md. at 148, 154, 171 A.3d at 1191, 1194. The court had previously acknowledged that pretrial identification is not limited to photo arrays, lineups, or other forms of State identification procedures. *Id.* at 152, 171 A.3d at 1193 (citing *Williams v. State*, 364 Md. 160, 178, 771 A.2d 1082, 1092 (2001)). Therefore, even though the identification of Green was not the result of standard procedures, it inevitably established him as the shooter. *Green*, 456 Md. at 163, 171 A.3d at 1200. The court concluded that the identification of Copeland required disclosure, since it was relevant information to the identification of Green. *Id.* at 162, 171 A.3d at 1199. Applying this conclusion, the court held that under the circumstances of the present case, the State violated Md. Rule 4-263(d)(7)(B) by failing to disclose Carter's pretrial identification of Copeland. *Id.* at 156, 171 A.3d at 1196.

After establishing that the State violated Md. Rule 4-263(d)(7)(B), the court examined whether the violation was harmless. *Green*, 456 Md. at 165, 171 A.3d at 1201. In order to determine if the violation was harmless, the court must assess whether the violation affected the verdict. *Id.* (citing *Hall v. State*, 437 Md. 534, 540-41, 87 A.3d 1287, 1291 (2014)). In applying this standard, the court held that the State's violation was not harmless beyond a reasonable doubt because knowledge of the pretrial identification of Copeland would have assisted Green's counsel in trial preparation. *Green*, 456 Md. at 166, 171 A.3d at 1202. Thus, the court reversed and remanded the case for a new trial. *Id.* at 168, 171 A.3d at 1203. Judge McDonald dissented, arguing that the majority opinion creates uncertainty in the

application of the rule and disturbs the precise and unambiguous language of the rule. *Id.* at 172, 171 A.3d at 1205.

The Court of Appeals of Maryland held that a pretrial identification of a co-defendant that is equivalent to an identification of the defendant falls within the scope of Md. Rule 4-263(d)(7)(B). Therefore, disclosure by the State is required since that identification is relevant information under the rule. The court's decision carves a narrow mandatory discovery disclosure under Md. Rule 4-263, without disturbing the plain meaning of the rule. This ruling demonstrates the court's goal to preserve fundamental fair trial rights by balancing the right to put on a defense with the ability of the prosecution to use relevant evidence in achieving justice. This case requires the prosecution to exercise its due diligence in reviewing and establishing whether a pretrial identification of a co-defendant must be disclosed under Md. Rule 4-263(d)(7)(B). This duty could make it challenging for prosecutors to understand what type of testimony constitutes an identification requiring disclosure. Expanding this duty of due diligence could also create an uncertainty for parties involved regarding whether the prosecution met all mandated discovery disclosures